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07                   UNITED STATES DISTRICT COURT  
08                   WESTERN DISTRICT OF WASHINGTON  
09                   AT SEATTLE

10 DAVID FRANKLIN WEST,    ) Case No. C07-617-RSL  
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16 Plaintiff David Franklin West, a former state inmate, is proceeding *pro se* and *in forma  
pauperis* in his attempt to bring an amended 42 U.S.C. § 1983 civil rights claim against the  
17 Washington State Department of Corrections (“DOC”), employees Rick Rosales and Joel  
18 Eskes, and Washington Attorney General Rob McKenna. Dkt. No. 15. By order dated July  
19 20, 2007, United States Magistrate Judge James P. Donohue declined to serve plaintiff’s  
20 original complaint but granted leave to amend certain specified deficiencies. Dkt. No. 14.  
21 Plaintiff’s proposed amended complaint alleges acts on the part of DOC employees including,  
22 but not limited to, using excessive force while detaining plaintiff for refusing to submit to  
23 urinalysis testing, which allegedly resulted in numbness and diminished use of plaintiff’s left  
24 thumb and forefinger. Dkt. No. 15. After careful consideration of the amended complaint,  
25 supporting materials, governing law and the balance of the record, the Court ORDERS as  
26 follows:

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01        Rule 8(a) of the Federal Rules of Civil Procedure requires plaintiffs to submit a  
 02 complaint “which sets forth . . . a short and plain statement of the claim showing that the  
 03 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). In order to state a claim for relief under §  
 04 1983, a plaintiff must assert that he suffered a violation of rights protected by the Constitution  
 05 or created by federal statute, and that the violation was proximately caused by a person acting  
 06 under color of state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991); *WAX*  
 07 *Techs., Inc. v. Miller*, 197 F.3d 367, 372 (9th Cir. 1999) (en banc). This requires the plaintiff  
 08 to allege facts showing how a specific individual violated a specific right, causing the harm  
 09 alleged in the plaintiff’s complaint. *Arnold v. Int’l Bus. Machs. Corp.*, 637 F.2d 1350, 1355  
 10 (9th Cir. 1981).

11        (1)     Dismissal of State Defendant. Plaintiff has failed to correct certain  
 12 deficiencies outlined in the July 20, 2007 Order. *See* Dkt. No. 14. First, plaintiff seeks  
 13 money damages against the DOC and certain state officials acting in their official capacity.  
 14 Such a claim runs afoul of the Eleventh Amendment, which bars federal courts from  
 15 entertaining suits brought by private parties against a state or its instrumentalities absent  
 16 consent, waiver, or congressional abrogation. *See generally Tennessee v. Lane*, 541 U.S. 509,  
 17 517-19 (2004); *see also Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989)  
 18 (holding that Congress did not abrogate the states’ sovereign immunity by enacting § 1983,  
 19 and that a state, state agencies, or state officials acting in their official capacities are not  
 20 “persons” amenable to suit under § 1983). Here, the Eleventh Amendment presents an  
 21 insuperable bar to monetary relief. Accordingly, plaintiff’s allegations regarding the DOC  
 22 fail to state a claim for which relief may be granted and are DISMISSED pursuant to 28  
 23 U.S.C. § 1915(e)(2)(B)(ii).

24        (2)     Dismissal of Defendants Rosales and McKenna. Plaintiff’s allegations against  
 25 corrections officer Rick Rosales and Washington Attorney General Rob McKenna also fail to  
 26 state a claim upon which relief may be granted. Plaintiff fails to allege a specific injury

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proximately caused by the actions of Rosales acting under color of state law. Instead, plaintiff vaguely insists that Rosales “signs off or gives the go ahead to continually violate West’[s] [c]onstitutionally [p]rotected [r]ights.” Dkt. No. 15 at 22. Similarly, plaintiff fails to allege any action whatsoever by McKenna. Plaintiff simply identifies McKenna as the corrections officers’ “Boss.” Dkt. No. 15 at 53. These allegations are insufficient. Plaintiff has not alleged facts showing that these specific defendants have violated a specific constitutional right. Accordingly, claims against defendants Rosales and McKenna are DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

(3) Dismissal of “Civil Conspiracy” Claim. Plaintiff has failed to allege facts amounting to civil conspiracy by the government for which relief may be granted under § 1983. For such a claim to move forward, the complaint must allege that a private defendant and government agents acted with the common understanding to deprive the plaintiff of his constitutional rights. *Adickes v. S.H. Kress & Co.*, 398 US 144, 158 (1970). Plaintiff’s allegation of civil conspiracy is extremely vague. *See Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 783-84 (9th Cir. 2001) (conclusory allegations are insufficient to state a claim of civil conspiracy). Plaintiff has merely concluded that Joel Eskes violated his constitutional rights under orders from a superior officer. Plaintiff has not alleged violation of specific rights, or that a “meeting of the minds” occurred between Eskes and his superior officer. Accordingly, this claim is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

(4) Dismissal of “Retaliation” Claim. Plaintiff’s allegation of “retaliation” also fails to state a claim upon which relief may be granted under § 1983. “A prisoner suing prison officials under section 1983 for retaliation must allege that he was retaliated against *for exercising his constitutional rights* and that the retaliatory action does not advance legitimate penological goals, such as preserving institutional order and discipline.” *Bruce v. Ylst*, 351 F.3d 1283, 1288 (9th Cir. 2003) (emphasis added) (quoting *Barnett v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam)). Such claims must be evaluated in light of the deference

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01 accorded to prison officials, and the prisoner must submit evidence establishing a link  
 02 between the exercise of constitutional rights and the allegedly retaliatory action. *See, e.g.*,  
 03 *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). Here, plaintiff articulates no specific  
 04 right, let alone a constitutional right, serving as the basis for the alleged retaliation. Plaintiff  
 05 simply alleges that “Eskes and his DOC [c]o-conspirators have done . . . nothing short of  
 06 mak[ing] Mr. West’s life a total living [h]ell on [e]arth.” Plaintiff has not stated a  
 07 retaliation claim upon which relief may be granted and, for that reason, this claim is  
 08 DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

09       (5)     Dismissal of “Defamation” Claim. Next, plaintiff’s vague allegation of  
 10 “defamation” also fails to state a claim upon which relief may be granted. Allegations of  
 11 defamation alone do not state a § 1983 claim. *Paul v. Davis*, 424 U.S. 693, 701-10 (1976).  
 12 In order to state a valid claim for defamation under § 1983, the plaintiff must allege loss of a  
 13 constitutional right—i.e., a property or liberty interest recognized by state law—along with  
 14 the alleged loss of reputation. *Cooper v. Dupnik*, 924 F.2d 1520, 1532 (9th Cir. 1991).  
 15 Plaintiff does not allege loss of a constitutional right and for that reason this claim is  
 16 DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

17       (6)     Service by Clerk on Remaining Defendant. As to plaintiff’s remaining claims  
 18 against defendant Joel Eskes regarding urinalysis and excessive force, it is hereby ORDERED  
 19 that the Clerk mail him the following by first class mail: a copy of plaintiff’s complaint and of  
 20 this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of  
 21 Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid,  
 22 addressed to the Clerk’s office.

23       (7)     Response Required. The above-named defendant shall have **thirty (30) days**  
 24 within which to return the enclosed Waiver of Service of Summons. Any defendant who  
 25 timely returns the signed Waiver shall have **sixty (60) days** after the date designated on the  
 26 Notice of Lawsuit to file and serve an answer to the Complaint or a motion permitted under

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01 Rule 12 of the Federal Rules of Civil Procedure.

02 Any defendant who fails to timely return the signed Waiver will be personally served  
03 with a summons and Complaint, and may be required to pay the full costs of such service,  
04 pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or  
05 motion permitted under Rule 12 within **thirty (30) days** after service.

06 (8) Filing and Service by Parties, Generally. All attorneys admitted to practice  
07 before this Court are required to file documents electronically via the Court's CM/ECF  
08 system. Counsel are directed to the Court's website, [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov), for a detailed  
09 description of the requirements for filing via CM/ECF. All non-attorneys, such as *pro se*  
10 parties and/or prisoners, may continue to file a paper original of any document for the Court's  
11 consideration. **A party filing a paper original does not need to file a chambers copy.** All  
12 filings, whether filed electronically or in traditional paper format, must indicate in the upper  
13 right hand corner the name of the Judge to whom the document is directed.

14 Additionally, any document filed with the Court must be accompanied by proof that it  
15 has been served upon all parties that have entered a notice of appearance in the underlying  
16 matter.

17 (9) Motions. Any request for court action shall be set forth in a motion, properly  
18 filed and served. Pursuant to amended Local Rule CR 7(b), any argument being offered in  
19 support of a motion shall be submitted as a part of the motion itself and not in a separate  
20 document. **The motion shall include in its caption (immediately below the title of the**  
21 **motion) a designation of the date the motion is to be noted for consideration upon the**  
22 **court's motion calendar.**

23 Stipulated and agreed motions, motions to file overlength motions or briefs, motions  
24 for reconsideration, joint submissions pursuant to the option procedure established in Local  
25 Rule CR 37(a)(2)(B), motions for default, requests for the clerk to enter default judgment,  
26 and motions for the court to enter default judgment where the opposing party has not

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01 appeared shall be noted for consideration the same day they are filed. *See* Local Rule CR  
02 7(d)(1). All other non-dispositive motions shall be noted for consideration no earlier than the  
03 third Friday following filing and service of the motion. *See* Local Rule CR 7(d)(3). All  
04 dispositive motions shall be noted for consideration no earlier than the fourth Friday  
05 following filing and service of the motion.

06 For electronic filers, all briefs and affidavits in opposition to either a dispositive or  
07 non-dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday  
08 immediately preceding the date designated for consideration of the motion. If a party files a  
09 paper original (i.e., a *pro se* and/or prisoner), that opposition must be received in the Clerk's  
10 office by 4:30 p.m. on the Monday preceding the date of consideration. If a party fails to file  
11 and serve timely opposition to a motion, the court may deem any opposition to be without  
12 merit.

13 Additionally, the party making the motion may file and serve, not later than 11:59  
14 p.m. (if filing electronically) or 4:30 p.m. (if filing a paper original with the Clerk's office)  
15 on the judicial day immediately preceding the date designated for consideration of the  
16 motion, a response to the opposing party's briefs and affidavits.

17 (10) No Direct Communications with District Judge or Magistrate Judge. No  
18 direct communication is to take place with the United States District Judge or Magistrate  
19 Judge with regard to this case. All relevant information and papers are to be directed to the  
20 Clerk.

21 (11) The Clerk is directed to send a copy of this Order to the plaintiff and the  
22 Honorable Robert S. Lasnik.

23 DATED this 25<sup>th</sup> day of September, 2007.

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Robert S. Lasnik  
United States District Judge

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03 Recommended for entry this  
04 24th day of September, 2007.

05 s/ JAMES P. DONOHUE  
06 United States Magistrate Judge

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